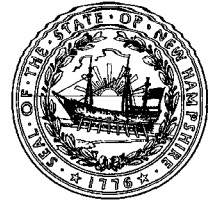




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

LETTER OF DEFICIENCY
SP-06-002

January 20, 2006

James J Burke Jr
PO Box 896
Ossipee, NH 03814

RE: DES Wetlands File #2004-00568 72 Deer Cove Rd, Ossipee

Dear Mr. Burke Jr:

The Department of Environmental Services ("DES") has recently completed a review of the above referenced file as it relates to the above referenced property, more specifically referenced on Town of Ossipee Tax Map 35 as Lot 38 (the "Property"). The purpose of the review was to determine compliance with RSA 483-B, the Comprehensive Shoreland Protection Act (CSPA) and NH Code of Admin. Rules Env-Ws 1400-1411 and RSA 482-A and NH Code of Admin. Rules Wt 100-800.

Base on the review the following has been documented:

1. On April 5, 2004, a compliant was filed with the DES alleging the cutting of trees and saplings within the protected shoreland;
2. On April 8, 2004, DES issued an alleged violator letter, to provide you with an opportunity to reply to the allegation;
3. On April 13, 2004, DES personnel spoke with you on the phone as it related to the cutting of vegetation on the subject property, identified on Town of Ossipee Tax Map 35 as Lot 38. DES stated there would be a site inspection with follow up outlining what would be required to bring the property into compliance;
4. On May 17, 2004, DES personnel inspected the shoreline and documented the installation of a concrete patio on the lake ward side of Deer Cove road, measuring approximately 16 feet by 8 feet;
5. On September 15, 2004, DES personnel inspected the property in your presence, and determined that 4 native saplings (minimum height of 5 feet) would need to be planted in the general location of the 4 trees cut. A Wetlands Inspection Report was filed at the time of the inspection, and signed by yourself and the DES inspector (copy enclosed);
6. On October 7, 2004, you submitted photos and a cover letter documenting the planting of (4) Boulevard Cypress, measuring approximately 5 feet in height;
7. On October 8, 2004, DES issued a letter stating the case would be closed at that time, though reserved the right to reopen the matter should additional information be received regarding additional violations on the subject property;

8. On February 23, 2005, a new complaint was filed with DES alleging additional cutting of vegetation on the property;
9. On February 24, 2005, DES issued an alleged violator letter, to provide you with an opportunity to reply to the allegation;
10. On March 3, 2005, DES personnel spoke with you on the phone, at which time you stated a group of oak trees damaged by a recent storm had been removed from the property, at which DES requested you put in writing the events related to the recent tree cutting;
11. On May 26, 2005, personnel inspected the property in your presence, and documented 12 stumps in the area in which trees had been removed during February 2005, and the addition of a concrete step measuring approximately 16 feet by 1 foot 7 inches on the lake side of the previously documented 16 foot by 8 foot concrete patio; and two of the four cypress planted as a requirement for restoration, located on the north side of the lot, closest to Blanchard Road, were not healthy.

In accordance with RSA 483-B, the CSPA, the following applies with respect to the documented activities on the subject property:

1. RSA 483-B: 9 (V) (a) (1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and under story, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
2. RSA 483-B:9 (V)(a)(2) (A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place.
3. RSA 483-B: 4 (XXIV) "Tree" means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.
4. RSA 483-B: 4 (XXI) "Shrub" means any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.

In accordance with RSA 482-A and the NH Code of Admin. Rules Wt 100-800, the following applies with respect to the documented activities on the subject property:

1. RSA 482-A:3 (I) states that no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department.
2. RSA 482-A: 2 (IX). "Structure" means, notwithstanding any other provision of law, something installed, erected, or constructed, but shall not include a bench, landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that such benches, landings, or stairs are installed, erected, or

constructed without regrading or recontouring of the shoreline and are not over water. Structures include, but are not limited to, the following: fence, dock, breakwater, post, pile, building, bridge, culvert, and wall.

3. Wt 101.43 "Grandfathered status" means that a structure: (a) Was in place before permit jurisdiction under RSA 482-A: 3, I or its predecessor statute, RSA 483-A: 1, I, took effect, which for areas in or adjacent to tidal waters means June 22, 1967 and for all other jurisdictional areas means July 2, 1969; (b) Has remained unaltered in location, size and configuration; and (c) Has not been abandoned.

Based on the review of file documents and the applicable laws and rules pertaining to the tree cutting and construction of the concrete patio, DES has made the following determinations:

1. You were requested to, and agreed to, replant (4) four native saplings, a minimum of 5 feet in height. The four Boulevard Cypress, (*Chamaecyparis pisifera* 'Boulevard') which were planted are nonnative shrubs with a maximum height at maturity of 8 feet;
2. A concrete patio with the step addition, measuring approximately 16 feet by 9 feet 7 inches overall, was constructed with portions located below elevation 410 and therefore within the bank and bed of Ossipee Lake, which requires a permit from the NH Wetlands Bureau;
3. The file records do not substantiate the size and location of the concrete pad as it presently exists, and is therefore not considered a grandfathered, previously existing structure.

In response, you are requested to take the following actions:

1. Within 30 days of receipt of this Letter of Deficiency, submit a restoration plan to DES for review and approval. Have the restoration plan prepared by a professional environmental consultant, or licensed landscape designer and include provisions for removal of the concrete patio and associated step and replanting of the unhealthy cypress with native saplings (see enclosed list) on the Property. Submit the following with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 1. Existing conditions, with normal high water mark, elevation 410, and the location of the concrete pad and step; and
 2. Proposed conditions after reestablishing the jurisdictional areas, to include removal of all portions of the concrete pad and step and replacement of unhealthy shrubs with native saplings;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.

- d. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
2. Retain a professional environmental consultant, or licensed landscape designer to supervise the implementation of the restoration plan and to submit the restoration progress reports.
3. Implement the restoration plan only after receiving written approval and as conditioned by DES.

RSA 483-B, the New Hampshire Comprehensive Shoreland Protection Act, was enacted to protect and preserve the shorelands of the State to maintain the integrity and exceptional quality of the State's public waters. RSA 483-B and Env-Ws 1400-1411 establish minimum standards for the future subdivision, use, and development of the shorelands within 250 feet of the state's public waters.

RSA 482-A, the New Hampshire Wetlands law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

DES personnel may conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 483-B or RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Jeffrey D. Blecharczyk
Wetlands Bureau
Department of Environmental Services
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

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Should you have any questions regarding this letter, or wish to arrange a meeting, please contact Jeffrey D. Blecharczyk at (603) 271-6876.

Sincerely,

A handwritten signature in cursive script, appearing to read "Collis G. Adams", is written over a large, bold, black "COPY" stamp.

Collis G. Adams, CWS
Administrator
Wetlands Bureau

Enclosures

CERTIFIED MAIL: 7005 0390 0001 8424 3075

cc: Rene Pelletier, Manager, Land Resources Management Program
Gretchen R. Hamel, Administrator, DES Legal Unit ✓
Ossipee Conservation Commission
Ossipee Board of Selectmen
USACOE